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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,727	12/05/2003	Mark E. Herrmann	R0586-701110	1722
37462 7590 02/06/2008 LOWRIE, LANDO & ANASTASI, LLP ONE MAIN STREET, SUITE 1100 CAMBRIDGE, MA 02142			EXAMINER LEE, BENJAMIN WILLIAM	
			ART UNIT 3714	PAPER NUMBER
			NOTIFICATION DATE 02/06/2008	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@ll-a.com
gengelso@ll-a.com

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/728,727	Applicant(s) HERRMANN ET AL.	
	Examiner Benjamin W. Lee	Art Unit 3714	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 January 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

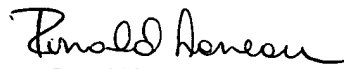
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-35.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.


Ronald Laneau
Primary Examiner
Art Unit 3714

Continuation of 3. NOTE: The newly added claim limitation "wagering game" to independent claims 1 and 25 introduces new issues/claim combinations that would require further consideration and search. The examiner notes that the amendments to claims 12, 13, 15, and 16 would overcome the previous rejections under 35 U.S.C. 101.

Continuation of 11. The examiner respectfully disagrees with the applicant's argument that Itkis teaches away from combination with Metke because "Itkis emphasizes that any other means of entry beyond a free method would run afoul of gaming law" (Applicant's Remarks, pages 11-12). Itkis states that "in a majority of jurisdictions, bars and similar establishments are legally precluded from selling bingo cards to patrons and, quite likely, are not allowed to conduct even a free bingo game." This implies that there are some jurisdictions where selling bingo cards would be legal. The goal of Itkis is to adapt a pay-to-play bingo game into a free game. Therefore, it is reasonable to expect that Itkis could be modified back into a pay-to-play game since Itkis is based on such and there are jurisdictions where such a modification would be legal. Furthermore, nowhere in Itkis does it say that modifying its free game into pay-to-play game would not be possible or desirable; Itkis simply notes the advantages of offering the game for free. Therefore, the examiner disagrees with the applicant's assertion that Itkis teaches away from combination with Metke.

The examiner respectfully disagrees with the applicant's comments regarding the motivation to combine Metke and Itkis (Applicant's Remarks, last paragraph of page 12). It is well known that different people have different tastes in games (as well as books, movies, food, etc.). Therefore, it is reasonable to expect that replacing the "amusement video game" of Metke with the bingo game of Itkis would appeal to a different demographic. While it is true that there may be overlap between the set of people who like amusement video games with the set of people who like bingo games, it is highly probable that there will be groups of people who only like amusement games or only like the bingo game. The examiner notes that the phrase "wider audience" was not intended to necessarily mean that a bingo game would attract more people than an amusement game, but rather that the overall system of Metke would attract more people by offering different kinds of games that appeal to different game interests.

The examiner also respectfully disagrees with the applicant's argument that Langan teaches away from combination with Metke. The applicant argues that "Langan teaches that its game of skill may be provided in two mutually exclusive ways, the first a pay method of play, and the second a free method of play" and cites col. 4, lines 27-30 in Langan. The aforementioned section of Langan states "The game cards may also be made available for sale or given away in commercial outlets at which games, novelty items or other sweepstakes-type game cards are available." Nowhere does Langan say that the methods of play are mutually exclusive (i.e. can not be used simultaneously). Thus, Langan does not teach away from the combination with Metke.